

## **II. ENDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. Overview**

Based on a thorough review of the entire body of evidence presented in the record and consideration of general regulatory policy issues, the Commission finds as a matter of fact and concludes as a matter of law that the Statement should not be approved for the reasons discussed in the following sections of this Order. This docket will be kept open for review of any revised Statement to address those aspects currently premature or deficient, as discussed in this Order.

BellSouth asked the Commission to approve the Statement, and asserted that the Statement would be useful to potential new entrants into the local exchange market who do not have the desire or resources to negotiate interconnection agreements, thereby eliminating this potential hurdle for new entrants. In addition, BST requested that the Commission certify that the access and interconnection generally offered within the Statement meets the requirements of the competitive checklist contained in Section 271(c)(2)(B). However, the Commission agrees with the Consumers' Utility Counsel ("CUC") that the Commission need not make any findings in this docket with respect to Section 271, including whether the SGAT would satisfy the competitive checklist of Section 271(c)(2)(B).

Most of the intervenors asked the Commission to reject the Statement. All of the intervenors asked, either as an alternative to requesting rejection or as their primary request, for the Commission not to approve the Statement but only permit it to take effect, so that the Commission can continue its review under Section 252(f) and modify or reject the Statement at a later date. AT&T and other intervenors countered BellSouth's asserted need for the SGAT by stating that potential new entrants, and the existing CLECs in Georgia, really need BellSouth's actual performance under existing agreements and the requirements of Sections 251 and 252(d). BellSouth did not identify any carrier which had requested that BellSouth file the Statement,<sup>6</sup> and no company lacking an agreement intervened to support BellSouth's proposed Statement.

Several intervenors including MFS and Sprint stated that their time for review of the SGAT was so limited that they were able only to address key issues. However, they added that the SGAT provisions on these key issues are so clearly inconsistent with the requirements of the Act that without more, they demonstrate that the Statement must be rejected.

The Commission finds that the Statement does not conform to pertinent provisions of the Act. The Act requires that a State Commission may not approve a statement unless such statement complies with subsection (f) of Section 252 and Section 251 and the regulations thereunder promulgated by the FCC. This signifies that the Commission's evaluation of the Statement must use a different approach from that used in conducting the arbitrations and approving the interconnection

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<sup>6</sup> Tr. 2981 (BST witness Varner).

agreements (whether negotiated or arbitrated). Review of an arbitrated agreement merely calls for determining whether its provisions are inconsistent with Sections 251 and 252(d), not whether the agreement addresses every issue which is covered by those sections. In addition, an arbitrated agreement is to be approved if its provisions are not inconsistent with those sections. To approve the Statement, however, the Commission must affirmatively determine that each and every standard and requirement of Sections 251 and 252(d) is actually addressed and that the SGAT's provisions can actually be implemented in a realistic way.<sup>9</sup> This also does not mean that BellSouth must depend upon CLECs actually ordering each item that is "generally offered," in order to prove that each item is functionally available. Instead, if there are items that CLECs have not yet ordered, BellSouth should be able to demonstrate availability through testing procedures.

In other words, the Statement must be comprehensive in order to comply with Sections 251 and 252(d). The Commission's arbitration rulings were directed only to sets of issues as framed by individual parties in four cases (MFS, Docket No. 6759-U; AT&T, Docket No. 6801-U; MCI, Docket No. 6865-U; and Sprint, Docket No. 6958-U). Those issues did not encompass the totality of issues under Sections 251 and 252(d), and in ruling upon what was presented, the Commission did so as an arbitration panel responding within the framework and proposals presented by individual companies. The arbitration decisions also served the limited purpose of determining what the bilateral contracts between disputing parties should provide. Approval of a Statement under Section 252(f) involves much more; it essentially certifies that BellSouth's Statement represents a comprehensive offering that is available to CLECs in compliance with Sections 251 and 252(d).

Moreover, the Statement is not necessary to facilitate the entry of competitive local exchange carriers ("CLECs") into Georgia's local exchange markets. For example, new entrants could rapidly access the provisions of the large number of negotiated and arbitrated interconnection agreements between BellSouth and both large and small CLECs.<sup>10</sup> BellSouth remains free, of course, voluntarily to use its Statement as a representation of its standard offer to CLECs; but it would be premature for this Commission to allow the Statement to have the status of becoming effective under Section 252(f), for the reasons discussed in this Order.

Several CLECs presented evidence that they are proceeding to take steps to implement their interconnection agreements. The Statement also reflects rulings by the Commission in arbitration proceedings, notably those involving AT&T (Docket No. 6801-U) and MCI (Docket No. 6865-U). Portions of the Statement duplicate issues pending before the Commission in its proceeding to establish cost-based rates for interconnection and unbundled network elements (Docket No. 7061-U); as to these matters, the Statement is premature. In addition, the record shows that BellSouth has not

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<sup>9</sup> Compare Section 252(e)(2) (the commission "may only reject" an agreement upon certain findings), with Section 252(f)(2) (the commission "may not approve" the Statement unless it complies with the pertinent standards and requirements).

<sup>10</sup> See, e.g., Statement at 1.

yet demonstrated that it is able to fulfill important aspects of the Statement's provisions on a nondiscriminatory basis that places CLECs at parity with BellSouth; as to these aspects, it again would be premature to allow the Statement to take effect. The Statement should not be approved so long as BellSouth has not demonstrated that it is able to actually provision the services of interconnection, access to unbundled elements, and other items listed in the Statement and required under Sections 251 and 252(d).<sup>11</sup>

As to the contention that the SGAT helps new entrants, what new entrants, smaller carriers, and all CLECs need is much less a standard offer that takes effect as a Statement under Section 252(f), and much more the actual ability of BellSouth to perform under its existing agreements or a Statement. This does not mean that a Statement is judged by the amount of CLEC activity, but by the ability of BellSouth to actually provide the items offered by the Statement, in compliance with the Act. Until BellSouth is actually able to provide interconnection, cost-based rates not subject to true-up, access to unbundled network elements, electronic interfaces for operational support systems, and the other items required under Sections 251 and 252(d), approval of the Statement would offer no benefit to other carriers. Instead, approval of the Statement under these conditions would be misleading by stating that BellSouth "generally offers" items that are not actually available.

BellSouth recognized that the overall purpose of the Act is to open telecommunications markets to competition. This purpose is served in pertinent part, BellSouth stated, by ensuring that potential entrants to the local exchange market have available to them the set of functions and capabilities to begin providing service, identified in Section 251 of the Act. (BellSouth Brief at 4.) The primary question in this case, however, is whether BellSouth has done its part in making such functions and capabilities available, to date.

BellSouth also argued that the Statement represents the Commission's rulings in arbitration dockets, and therefore meets the requirements of Sections 251 and 252(d). (BellSouth Brief at 5.) This argument overlooks significant differences between an arbitration, and the SGAT. To begin with, the arbitrations were conducted for the specific purpose of resolving disputes between parties over the meaning of provisions within Sections 251 and 252(d), and how they should be applied. The arbitrations did not address, for the most part, whether BellSouth was actually making available unbundled elements (for example) but instead whether certain items such as sub-loop unbundling,

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<sup>11</sup> Some intervenors advanced other objections to the Statement, based on opposition to portions of the Statement that reflect the Commission's decisions in arbitration cases. These include the Commission's ruling that the rebundling or recombination of unbundled network elements, without adding any CLEC facilities, functionalities or capabilities (other than operator services), should be priced and treated as resale under Section 251(c)(4) rather than unbundled elements under Section 251(c)(3); and Commission rulings involving the application of BellSouth tariff restrictions to resale, and resale of contract service arrangements ("CSAs"). These arguments would essentially ask the Commission to reconsider these previous rulings. In light of the Commission's disposition of the Statement on other grounds, the Commission does not engage in such a reconsideration.

network interface devices, mid-span meets, and dark fiber should be required, and what procedures should apply (for example, for accessing rights-of-way). Thus the arbitration rulings resolved disputes about terms and conditions. However, the arbitrations were for the most part not designed to inquire into whether BellSouth had actually made such items available.

For certain items, the arbitrations did inquire into whether BellSouth had made access actually available. The primary example of this is electronic interfaces as a part of operational support systems ("OSS"). There, it was quite clear that electronic interfaces had not yet been developed, and all the Commission could do was affirm its previous rulings in Docket No. 6352-U that BellSouth and the parties continue the development of such interfaces.

There are some aspects of the SGAT that were not addressed in the arbitrations. The major one, of course, is the pricing for unbundled network elements. The arbitrations did not establish rates for such elements pursuant to Section 252(d). The Commission was unable to determine in the arbitrations what rates would comply with Section 252(d), and therefore established Docket No. 7061-U and made the interim arbitrated rates subject to true-up using whatever rates are established in Docket No. 7061-U. A smaller aspect of the SGAT not addressed in the arbitrations, although not without significance for some CLECs, is the price for dark fiber when provisioned as an unbundled network element; the Commission did not adopt any interim rate for dark fiber in the arbitrations.

In offering a Statement of Generally Available Terms and Conditions, BellSouth is asking the Commission to do something else not addressed in the arbitrations: to approve a "statement of the terms and conditions that such company generally offers" to comply with the requirements of Section 251 and the regulations thereunder, and the standards under Section 252(d). "Generally offering" terms and conditions is meaningless if the offer is on paper only, without the capability to provide the actual service. This was not an issue in the arbitrations, but is an issue under Section 252(f).

The following points represent a summary of the major findings and conclusions in this Order:

- The Statement is not necessary to facilitate the entry of competitive local exchange carriers ("CLECs") into Georgia's local exchange markets.
- The Statement's pricing for interconnection, unbundled network elements, interim number portability, and reciprocal compensation represents interim rates subject to true-up. The cost-based prices for most or all of these items will be established by the Commission in Docket No. 7061-U. Such interim rates subject to true-up are not cost-based under Section 252(d), and as a matter of policy, if not law, should not be sanctioned in a Statement which results in retroactive ratemaking.
- The Statement's rates for dark fiber and for access to poles, ducts, conduits, and rights-of-way are also interim rates subject to true-up, and were not taken from the arbitration rulings so there is even less basis to find that such rates meet the cost-based requirements of the Act. Further, one of the unbundled items is directly contrary to a ruling by the Commission in the

AT&T arbitration, Docket No. 6801-U: the recurring (monthly) charge for end office switching of \$0.0016 should include all features and functions of the switch, rather than impose additional prices for features and functions as the SGAT proposes.

- For unbundled access to network elements and for resale, BellSouth has not yet demonstrated that it is able to provide access to operational support systems ("OSS") on a nondiscriminatory basis that places CLECs at parity with BellSouth.
- The record shows that BellSouth is not yet able to fulfill important aspects of the Statement's provisions for interconnection and unbundled access to network elements on a nondiscriminatory basis that places CLECs at parity with BellSouth. The Commission is concerned that approval of the Statement under current conditions would be misleading, by stating that BellSouth "generally offers" items that are not actually available.
- The Statement does not meet the interconnection requirements of Section 251(c)(2), because BellSouth is not yet providing interconnection including full physical collocation to carriers on a basis (including standards and intervals) that is at least equal in quality to that provided to itself or to a subsidiary.
- BellSouth proposed that intervals and many other aspects of collocation be governed by its Negotiations Handbook. However, that handbook is not part of the SGAT, and it is subject to unilateral change. (Some other aspects of interconnection are to be governed by BellSouth manuals, which again are subject to unilateral change by BellSouth.) In addition, BellSouth is still developing its processes for physical collocation, so the Statement is incomplete as to those processes.
- BellSouth is not yet able to provide certain unbundled loops as requested by new CLECs and the underlying operations support and billing systems on a fully tested and nondiscriminatory basis that provides parity to CLECs.
- The Statement provides little information on how CLECs can actually order switching elements, on the time frames for ordering, or on billing and auditing. The SGAT refers to a document entitled "OLEC-to-BellSouth Ordering Guidelines (Facilities-based)" for information regarding ordering and delivery of unbundled switching. The latter document is not a part of the SGAT.

These points are discussed in further detail in the following sections of this Order.

#### **B. Interconnection Requirements of Section 251(c)**

Section 251(c)(2) of the Act provides that the duties of an incumbent LEC such as BellSouth include:

(2) **INTERCONNECTION.** — The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

A closely related topic is collocation, as to which the Act at Section 251(c)(6) provides that BellSouth's duties include:

(6) **COLLOCATION.** — The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

Georgia's Telecommunications and Competition Development Act of 1995 also contains provisions relating to interconnection. O.C.G.A. § 46-5-164(a) provides that all LECs shall permit reasonable interconnection with other certificated LECs, including all or portions of such services as needed to provide local exchange services.

#### 1. Positions of the Parties

BellSouth argued that its Statement complies with the requirements of Section 251, including the Commission's arbitration decisions which applied Section 251 standards for interconnection. According to BellSouth, Section I of the Statement provides for complete and efficient interconnection of requesting telecommunications carriers' facilities and equipment with BellSouth's network. This involves the following components: (1) trunk termination points generally at BellSouth tandems or end offices for the reciprocal exchange of local traffic; (2) trunk directionality allowing the routing of traffic over a single one-way trunk group or a two-way trunk group depending upon the type of traffic; (3) trunk termination through virtual collocation, physical collocation, and interconnection via purchase of facilities from either company by the other company; (4) intermediary

local tandem switching and transport services for interconnection of CLECs to each other, and (5) interconnection billing.<sup>12</sup>

AT&T, MCI and other intervenors argued that the requirements of Section 251(c)(2) have not been met because, for example, BellSouth has not made physical collocation fully available and numerous technical requirements for physical collocation have not been established. BellSouth placed many of the terms and conditions for collocation in its "Negotiations Handbook," which is not a part of the SGAT and which BellSouth reserves the right to change unilaterally at any time. MCI argued that this is untenable, and further that even if the handbook contains reasonable intervals, no physical collocations have yet been completed so it is unknown whether BellSouth would be successful in meeting such intervals. (MCI Brief at 10.) MCI and Sprint pointed out that BellSouth's processes for implementation of physical collocation are still in a developmental phase.<sup>13</sup>

Many of the intervenors opposed Commission approval of the Statement stating that the evidence demonstrates that it does not comply with Section 251 and 252(d) of the Act. These intervenors added that approval of the Statement would significantly delay the development of local competition. This is because they are concerned that if the Statement is approved and BellSouth subsequently obtains approval from the FCC for in-region interLATA services, BellSouth will no longer have the incentive to do its best in meeting its obligations under Sections 251 and 252(d). The intervenors who advanced this argument included ACSI, ICI, MFS, and MCI.

ICI, MCI, MFS, and others asserted that approving or allowing the SGAT to go into effect is not necessary for new CLECs seeking to enter Georgia's local exchange market, because numerous other negotiated and arbitrated agreements exist from which new entrants can select provisions. Under their view, BellSouth can still offer and new entrants can still accept the rates, terms and conditions contained in BellSouth's Statement simply by voluntarily signing a contract with BellSouth. This would render the Statement essentially a "standardized contract" (ICI Brief at 6) offered by BellSouth, without the added status of "taking effect" under Section 252(f).

AT&T contended that there is insufficient evidence for the Commission to determine that the interconnection offered under the SGAT is at least at parity with the access BellSouth provides itself, as required under Section 251(c)(2). AT&T pointed to the fact that BellSouth has not filed its internal measures of quality, as it was requested to do on the last day of the hearings (March 10, 1997). If and when BST complies with that request, AT&T added, there is no way to determine whether the measures are complete or whether interconnection that is not yet available for use under the Statement will be provided at the same level of quality BellSouth provides itself. The SGAT does not contain quality standards, interval commitments, measures of quality, or incentives associated

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<sup>12</sup> BellSouth Brief at 6, citing Tr. 283-90 (BST witness Scheye).

<sup>13</sup> Tr. 2082-83 (AT&T witness Taroplin); Tr. 2427; MCI witness Agatston profiled direct testimony at 13.

with such items. AT&T also argued that the Commission could not make a finding that the interconnection offered under the SGAT is nondiscriminatory, because BellSouth has yet to file the interconnection agreements it entered into with other incumbent local exchange carriers prior to the Act, and will not do so until June or July, 1997.<sup>14</sup>

With respect to collocation under Section 251(c)(6), AT&T objected that the Statement omits a price for an element which would allow collocated carriers to connect one cage to another. AT&T also objected that the rates for physical collocation are interim rates subject to true-up, and are not cost-based.<sup>15</sup> AT&T and MCI both pointed out that the Statement does not establish any time intervals for physical collocation; such intervals must be negotiated with BellSouth. For instance, physical collocation may take two to four months or longer to provide in some circumstances, but AT&T argued that there is no evidence that BellSouth experiences similar delays and thus that BellSouth has not shown that it can actually provide collocation on a nondiscriminatory basis.<sup>16</sup> AT&T and MCI concluded that for these and the other arguments they advanced, the Commission should reject BellSouth's Statement.

## 2. Commission Decision

The Commission finds and concludes that although BST has entered into numerous interconnection agreements with competing LECs, participated in arbitration proceedings with several carriers, developed ordering procedures for implementing other aspects of the agreements, BellSouth is not yet providing interconnection to carriers that is at least equal in quality to that provided to itself or to a subsidiary. While partial physical collocation has taken place, full physical collocation has not yet occurred and the record shows that BellSouth is still developing its procedures and may not be able to make physical collocation available on a basis equal to the installation of BellSouth's own facilities. In reaching this conclusion, the Commission does not draw upon the problems cited by intervenors that have been experienced in other states. The Commission believes it is appropriate to confine its review only to what is demonstrated in Georgia.

BellSouth proposed that the intervals and many other aspects of collocation be governed by its Negotiations Handbook. However, that handbook is not part of the SGAT, and it is subject to unilateral change.<sup>17</sup> Given that BellSouth is still developing its processes for physical collocation,

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<sup>14</sup> Tr. 423 (BST witness Scheye). The Commission's September 27, 1996 Order in Docket No. 6703-U does not require such pre-Act agreements to be filed until such time.

<sup>15</sup> AT&T Brief at 24-25, citing Tr. 727, 730 (BST witness Scheye).

<sup>16</sup> AT&T Brief at 24-25, citing Tr. 731 (BST witness Scheye).

<sup>17</sup> Tr. 795 (BST witness Scheye).

BellSouth has not demonstrated that physical collocation is currently actually available as promised by the SGAT and required under Section 251(c)(2).

The record shows that some network elements are not yet available for interconnection, and that BellSouth's provisioning of interconnection under existing agreements has involved significant delays and problems.<sup>18</sup> As early as July, 1996, ICI requested connection to certain BellSouth subloops, and BellSouth had not fulfilled the request as of the time of the hearings in this docket.<sup>19</sup>

To show compliance with the interconnection requirements of Section 251(c)(2), the Statement must be more than a written outline of what BellSouth intends to offer. In order to generally offer interconnection, BellSouth must be able to make it actually available, both technically and operationally.

The reciprocal exchange aspect and other pricing aspects of interconnection are discussed separately in the following section of this Order. As for interconnection billing, there was testimony indicating that BellSouth may not have fully verified its billing systems for use in interconnection and other aspects of billing with CLECs, so it would be appropriate for BellSouth to provide some documentation of its billing system testing in connection with any revised Statement.

#### C. Pricing Standards of Sections 251 and 252(d)

Pricing standards are contained within Sections 252 and 252(d) of the Act. Perhaps the primary price-related sections are contained within Section 252(d) with respect to interconnection, unbundled elements, and resale. To begin with, Section 252(d)(1) provides:

(1) INTERCONNECTION AND NETWORK ELEMENT CHARGES. — Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section —

(A) shall be —

(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

<sup>18</sup> Tr. 745 (BST witness Scheye); Tr. 1773-74 (MFS witness Meade); Tr. 2270-89 (ICI witness Strow); see also prefiled direct testimony and cross-examination of ACSI witness Robertson.

<sup>19</sup> Tr. 2887 (ICI witness Strow).



as well as the resale limitations are consistent with the Commission's previous orders.<sup>20</sup> The interim wholesale pricing for resale of services was affirmed in the arbitration rulings, and established by the Commission in Docket No. 6352-U.

BellSouth stated that its reciprocal compensation arrangements are in compliance with Section 252(d)(2), and that the rates for reciprocal transport and termination of local calls are consistent with the requirements of the Act and the Commission's previous Orders.<sup>21</sup>

A primary objection by intervenors was that the interim rates for unbundled elements cannot by definition be cost-based, because the Commission has not yet undertaken its review in the cost study proceeding in Docket No. 7061-U. They pointed out that these rates are not only interim, but are also subject to true-up according to rates that are established in the cost proceeding (Docket No. 7061-U), which both adds to the uncertainty and business risk facing the CLECs, and also proves that the interim rates are not cost-based in compliance with Section 252(d).<sup>22</sup> The intervenors who put forward this argument included AT&T, ICI, MCI, MFS, and Sprint.

MCI argued that Section 252(d)(1) is clearly stated in terms that indicate the present, and are not anticipatory in any way - that the Act simply does not contemplate that its requirements can be met on the basis of future compliance, however near. (MCI Brief at 13.) MCI also objected to the rates, terms and conditions associated with reciprocal compensation for transport and termination, arguing that they must be set in a way that does not reward incumbent carriers for network inefficiencies that they may experience relative to new entrants or punish new entrants for network efficiencies that they may experience relative to the incumbent. MCI argued that the SGAT's reciprocal compensation process is not equitable because it permits BellSouth to bill CLECs for tandem switches used to terminate calls from CLEC customers, but does not permit CLECs to bill BellSouth for the use of CLECs' switches performing the same functionality and covering the same geographic scope as BellSouth's tandems.<sup>23</sup>

In addition, AT&T and ICI pointed out that the Statement's rates for dark fiber were not based upon the Commission's rulings in the arbitration dockets; this is because the parties in those dockets did not propose, and the Commission did not establish rates for dark fiber in those

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<sup>20</sup> BellSouth Brief at 11-12, citing Tr. 351-56 (BST witness Scheye).

<sup>21</sup> BellSouth Brief at 11, citing Tr. 350-51 (BST witness Scheye).

<sup>22</sup> MCI witness Wood, prefiled direct testimony at 14; AT&T witness Winegard, prefiled direct testimony at 20; AT&T witness Gillan, prefiled direct testimony ("[m]ost of the pricing provisions set forth in Attachment A [to the SGAT] have not yet been found by the Commission to satisfy Section 252(d), and therefore, cannot meet the checklist.")

<sup>23</sup> MCI Brief at 29-30, citing Tr. 2641-42, 2777-78, MCI witness Wood's prefiled direct testimony.

proceedings. AT&T objected that prices set at tariffed rates cannot be accepted as cost-based rates pursuant to Section 252(d). ICI contended that BellSouth has thus not attempted to make a showing that these rates meet the pricing standard under Section 252(d)(1) of the Act.

AT&T also objected to the monthly charge of \$0.0016 for end office switching, which the SGAT states does not include retail services.<sup>24</sup> This qualification was not adopted by the Commission in the AT&T arbitration,<sup>25</sup> and AT&T also argued that it is contrary to FCC Rules which require that end office switching must include all features and functionality of the switch, including those needed to provide retail vertical service.

The Consumers' Utility Counsel argued that this docket is not the proper forum to revisit the Commission's arbitration rulings on the topics of geographic deaveraging, "rebundling" or "network platform" pricing issues, or whether contract service arrangements ("CSAs") should be sold at a discounted price to CLECs for resale. The CUC added that the Commission should not await access reform by the FCC or the reductions in intrastate access charges mandated by O.C.G.A. § 46-5-166(f) before reaching its decision regarding the Statement. (CUC Brief at 5.)

## 2. Commission Decision

With respect to the pricing of interconnection, unbundled network elements, reciprocal compensation, and access to poles, ducts, conduits, and rights-of-way, the Commission notes that it has initiated a docket for the purpose of establishing cost-based rates that will no longer be subject to true-up. That docket may also be used for establishing cost-based rates for interim number portability. The Commission has granted BellSouth's requests for an extension of time to file its proposed cost studies and rates in that docket.<sup>26</sup> It is unreasonable to expect that this Commission can approve the Statement and pricing arrangements as cost-based, as required by the Act, when the determinations as to a reasonable cost basis have yet to be made.<sup>27</sup> Accordingly, until the Commission has established the cost-based rates for interconnection including collocation, for unbundled elements, for reciprocal compensation, and for access to poles, ducts, conduits, and rights-of-way, pursuant to Sections 251 and 252(d), which can be used for BellSouth's SGAT, the Commission must reject the SGAT.

<sup>24</sup> Tr. 826 (BST witness Scheye).

<sup>25</sup> Tr. 827 (BST witness Scheye).

<sup>26</sup> At the time of this Order, BellSouth had been granted its request for an additional 30-day extension of time in order to file its proposed cost studies and rates by April 30, 1997.

<sup>27</sup> The Commission also notes that the Eighth Circuit has not yet issued its decision regarding the pricing and other provisions of the FCC's First Report and Order. That decision could have a significant impact on the actual standards by which to judge a Statement.

The Commission does not make light of the interim rates established in the arbitrations. However, as the Commission expressed in its arbitration rulings, determining cost-based rates is not a light undertaking and neither the parties nor the Commission had the benefit in the arbitrations of a searching evaluation of the cost studies and methodologies underlying the parties' proposed rates. Therefore the Commission moved quickly to establish the cost study proceeding in Docket No. 7061-U, although the Commission has subsequently granted BellSouth's requests for extension of time to compile data and revise cost study models to use an open, non-proprietary format.

The Statement's interim prices for interconnection including collocation, for unbundled elements, and for reciprocal compensation for transport and termination are taken from the Commission's rulings in arbitration dockets involving MFS (Docket No. 6759-U), AT&T (Docket No. 6801-U), and MCI (Docket No. 6865-U). In those rulings, issued by the Commission acting as an arbitration panel under Section 252(e), the Commission refrained from adopting any particular methodology or approving any cost study. For those very reasons, the Commission initiated the cost proceeding in Docket No. 7061-U. Thus, the Commission did not adopt those rates as cost-based rates under Section 252(d), and so the Commission adopted the true-up mechanism linked to cost study proceeding in Docket No. 7061-U.<sup>28</sup>

The true-up mechanism was acceptable for the arbitration rulings because those rulings addressed contractual disputes between two private parties, with the Commission acting as the arbitration panel under Section 252(e). However, a true-up mechanism is not appropriate for a statement of generally available terms and conditions under Section 252(f). Approval in a Statement of generally available rates that are interim and subject to true-up based upon subsequent proceedings appears equivalent to retroactive ratemaking. As a matter of policy, if not law,<sup>29</sup> a Statement that takes effect with the imprimatur of state and federal law should not provide for generally available rates that change retroactively.

The Commission also agrees with ICI that the Statement's rates for dark fiber were not taken from the arbitration rulings, and thus there is even less reason to find that such rates meet the cost-based requirement of Section 252(d)(1). In addition, BellSouth's witness Mr. Scheye agreed that some of the rates for network elements listed in Tab 2 of the Statement do not represent any form

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<sup>28</sup> Thus the status of the interim rates for interconnection including collocation, for unbundled elements, and for transport and termination is different from that of the interim pricing for resale of BellSouth's retail services. While the wholesale discount was established for the interim and is intended to be reviewed in a subsequent proceeding for purposes of a permanent discount, at least the interim discount was intended to be consistent with the pricing standard of Section 252(d)(3). Furthermore, the interim wholesale discount is not subject to a true-up reconciling the interim with any permanent discount.

<sup>29</sup> See O.C.G.A. § 46-2-25(d); see also Commission Rule 515-2-1-.03.

of total element long-run incremental cost ("TELRIC") pricing,<sup>30</sup> thus it has not been established that such items have been priced in compliance with Section 252(d). Further, one of the unbundled items is directly contrary to a ruling by the Commission in the AT&T arbitration, Docket No. 6801-U: the recurring (monthly) charge for end office switching of \$0.0016 should include all features and functions of the switch, rather than impose additional prices for features and functions as the SGAT proposes.<sup>31</sup>

**D. Other Requirements of Sections 251(b) and (c)**

Section 251 contains various requirements in addition to the interconnection requirements (discussed previously) under Section 251(c)(2). One of these is the requirement under Section 251(c)(3) that incumbent LECs provide unbundled access to network elements. Specifically, Section 251(c)(3) provides that the duties of incumbent LECs include:

(3) UNBUNDLED ACCESS. — The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

Georgia's Telecommunications and Competition Development Act of 1995 also contains provisions relating to unbundled network elements. O.C.G.A. § 46-5-164(d) provides:

(d) Such interconnection services shall be provided for intrastate services on an unbundled basis similar to that required by the FCC for services under the FCC's jurisdiction.

All LECs have a duty to provide nondiscriminatory access to poles, ducts, conduits and rights of way, pursuant to Section 251(b)(4), as follows:

(4) ACCESS TO RIGHTS-OF-WAY. — The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of

<sup>30</sup> Tr. 720.

<sup>31</sup> This was discussed in the Commission's February 26, 1997 Order Denying Motion for Rehearing in the AT&T arbitration, Docket No. 6801-U.

telecommunications services on rates, terms, and conditions that are consistent with section 224.

Local exchange companies also have the duty to provide dialing parity under Section 251(b)(3), as follows:

(3) DIALING PARITY. — The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

Section 251(b)(2) describes BellSouth's duty with respect to number portability as:

(2) NUMBER PORTABILITY. — The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

Each LEC has the following duty with respect to resale of its services, under Section 251(b)(1):

(1) RESALE. — The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

In addition, incumbent LECs such as BellSouth have additional duties with respect to resale, pursuant to Section 251(c)(4), as follows:

(4) RESALE. — The duty —

(A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and

(B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

Similarly, BellSouth as a company that has elected alternative regulation under Georgia's Telecommunications and Competition Development Act of 1995 has the obligation to allow resale of its services, under O.C.G.A. § 46-5-169(7).

## 1. Positions of the Parties

BellSouth argued that its Statement complies with the requirements of Section 251, including the Commission's arbitration decisions which applied Section 251 standards. According to BellSouth, its Statement provides nondiscriminatory access to network elements on an unbundled basis at any technically feasible point under just and reasonable rates, terms, and conditions, including collocation, operations support systems ("OSS"), the provision of dark fiber, and other unbundled elements. The Statement also contains a Bona Fide Request process to facilitate requests by any new entrant for interconnection or unbundled capabilities not included in the Statement.<sup>32</sup>

As to operational support systems (OSS), BellSouth stated that it has already spent a considerable amount of time and resources developing interfaces and related systems, in compliance with the Commission's previous orders in Docket No. 6352-U and the arbitration decisions. BellSouth also contended that the "web" interface projected to be available on March 31, 1997 will provide sufficient functionality for CLECs to access the services they need.

BellSouth stated that Section III of the Statement offers access to poles, ducts, conduits, and rights-of-way via a standard license agreement, consistent with the Commission's previous orders.<sup>33</sup>

For local loops, BellSouth stated that Section IV offers several loop types: 2-wire, 4-wire voice grade analog, 2-wire ISDN, 2-wire and 4-wire Asymmetrical Digital Subscriber Line ("ADSL"), 4-wire High-bit-rate Digital Subscriber Line, and 4-wire DS1 digital grade. Other loop types not identified in the Statement may be obtained pursuant to the Bona Fide Request Process. In addition, the Statement provides for loop distribution, loop cross connects, loop concentration, and access to Network Interface Devices ("NIDs"). BellSouth asserted that its provisioning of unbundled loops and additional local loop transmission components, as well as the rates for these items, are consistent with the Commission's previous orders.<sup>34</sup>

Local transport from the trunk side of a wireline local exchange carrier switch, unbundled from switching or other services, is covered by Section V of the Statement. BellSouth stated that this offers unbundled local transport with optional channelization from the trunk side of its switch, and that it offers both dedicated and common transport including DS0 channels, DS1 channels in conjunction with central office multiplexing or concentration, and DS1 or DS3 transport. Again,

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<sup>32</sup> BellSouth Brief at 6-7, citing Tr. 290-302 (BST witness Scheye).

<sup>33</sup> BellSouth Brief at 7, citing Tr. 302-04 (BST witness Scheye).

<sup>34</sup> BellSouth Brief at 7, citing Tr. 304-10 (BST witness Scheye).

BellSouth stated that these items and their rates are consistent with the Commission's previous orders.<sup>35</sup>

Section VI of the Statement relates to unbundled local switching. BellSouth stated that it offers a variety of switching ports and associated usage unbundled from transport, local loop transmission and other services. These include a 2-wire and 4-wire analog port, 2-wire ISDN digital and 4-wire ISDN DS1 port, and 2-wire analog hunting. Additional port types are available under the Bona Fide Request process. Until a long-term solution is developed, BellSouth stated that it provides selecting routing on an interim basis to a CLEC's desired platform using line class codes (subject to availability).<sup>36</sup>

BellSouth asserted that the Statement offers nondiscriminatory access to 911 and E911 services, directory assistance, and operator call completion services, to both facilities-based providers and resellers. In Section VII of the Statement, BellSouth offers to perform directory assistance and other number services on behalf of facilities-based CLECs, which allow end user customers in exchanges served by BellSouth to access BellSouth's directory assistance service by dialing 411 or the appropriate area code and 555-1212. BellSouth asserted that it offers CLECs access to its Directory Assistance database under the same terms and conditions currently offered to other telecommunications providers. BellSouth makes available its operator services in the same manner that it provides operator services to its own customers. In addition, BellSouth stated that it offers Centralized Message Distribution System ("CMDS") - Hosting and Non-Sent Paid Report System processing. BellSouth asserted that its provision of 911, directory assistance, and operator call completion services, as well as the rates for these services, are consistent with the Commission's previous orders.<sup>37</sup>

According to BellSouth, its Statement provides nondiscriminatory access to databases and associated signaling necessary for call routing and completion, including Signaling Links, Signal Transfer Points, and Service Control Points ("SCPs") (databases). The SCPs/Databases to which CLECs have access include, but are not limited to, Line Information Database ("LIDB"), Toll Free Number Database, Automatic Location Identification and Data Management System, Advanced Intelligent Network, and Selecting Routing. BellSouth stated that its signaling/database offering for call routing and completion is consistent with the Commission's previous orders.<sup>38</sup>

<sup>35</sup> BellSouth Brief at 8, citing Tr. 310-13 (BST witness Scheye).

<sup>36</sup> BellSouth Brief at 8, citing Tr. 313-18 (BST witness Scheye).

<sup>37</sup> BellSouth Brief at 9, citing Tr. 318-31 (BST witness Scheye).

<sup>38</sup> BellSouth Brief at 10, citing Tr. 335-43 (BST witness Scheye).

BellSouth added that it arranges with its directory publisher to make available White Pages directory listings to CLECs and their subscribers which include the subscriber's name, address, and telephone number. BellSouth asserted that CLEC subscribers receive no less favorable rates, terms, and conditions for directory listings than are provided to BellSouth's subscribers (e.g., the same information is included, the same type size is used, and the same geographic coverage is offered).<sup>39</sup> In addition, BellSouth asserted that it is providing nondiscriminatory access to telephone numbers. BellSouth serves as the North American Numbering Plan ("NANP") Administrator for its territory, and stated that it has established procedures to provide nondiscriminatory NXX code assignments to CLECs.<sup>40</sup>

BellSouth's Statement describes the interim number portability arrangements that are available, which include Remote Call Forwarding ("RCF") and Direct Inward Dialing ("DID"). BellSouth asserted that these arrangements comply with the FCC's regulations issued on July 2, 1996, in the First Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 95-116. BellSouth asserted that these arrangements, and the rates for RCF and DID, are consistent with this Commission's previous orders, and added that in conjunction with other industry participants BellSouth is pursuing an aggressive schedule to implement a long-term number portability solution as required by FCC orders.<sup>41</sup>

BellSouth stated that the local dialing parity requirement of Section 251(b)(3) is met because local service subscribers in BellSouth's region dial the same number of digits to place a local call, without the use of an access code, regardless of their choice of local service provider.<sup>42</sup>

A primary objection by intervenors was that nondiscriminatory operations support systems (OSS) have not yet been developed, tested, and implemented, and thus that CLECs do not have access to unbundled elements on the same basis that BellSouth has access to the same elements.<sup>43</sup> AT&T, MCI and others argued that before the Commission can approve any Statement, BellSouth must demonstrate that all the interfaces offered in the Statement for access to OSS for pre-ordering, ordering, provisioning, maintenance and repair, and billing are operationally ready for the purpose of providing service through resale and unbundled network elements. AT&T pointed out that BellSouth admitted that the interfaces to its OSS as described in Section 2 of the Statement are not

<sup>39</sup> BellSouth Brief at 9-10, citing Tr. 331-34 (BST witness Scheye).

<sup>40</sup> BellSouth Brief at 10, citing Tr. 334-35 (BST witness Scheye).

<sup>41</sup> BellSouth Brief at 10-11, citing Tr. 343-48 (BST witness Scheye), Tr. 2195-96 (AT&T witness Danforth).

<sup>42</sup> BellSouth Brief at 11, citing Tr. 348-50 (BST witness Scheye).

<sup>43</sup> See, e.g., Tr. 387-89 (BST witness Scheye); Tr. 2047, 2053 (AT&T witness Pfau); Tr. 3045-53, 3062, 2077 (BST witness Calhoun).



unbundled loops. Specifically, Mr. Robertson testified to undue delays and serious customer service disruptions experienced by ACSI in the provisioning of unbundled loops and number portability. These are the subject of ACSI's complaints to the FCC and to this Commission in Docket No. 7212-U. ACSI also presented evidence and expressed concern as to whether BellSouth's building management preferred provider, exclusive sales agency, and contract sales arrangements are anticompetitive.<sup>47</sup>

In addition to difficulties experienced with on-net and off-net service for customers of ACSI and MFS (which have their own fiber loops), and the testing for provisioning unbundled loops, ICI has not been able to obtain local transport due to BellSouth delays in providing other elements ICI needed to enter the local exchange market as a facilities-based competitor.<sup>48</sup> Therefore, they argue, the terms and conditions for access to unbundled elements are not just, reasonable, or nondiscriminatory, as required by Section 251(c)(3). They also contended that the OSS interfaces must be proven to work under actual conditions before the Commission can determine whether they comport with the requirements of Section 251. These arguments were advanced by ACSI, AT&T, ICI, MCI, MFS, and Sprint.

MCI objected that the Statement does not make clear that BellSouth offers common (local) transport. According to MCI, BellSouth's first clear offer to provide common transport appeared in its rebuttal testimony, and should be clarified in the Statement.<sup>49</sup>

With respect to resale, MFS recounted problems such as disconnection of the customer during conversion of the customer's service over to MFS, although disconnection should never have occurred in the first place and the reconnection was not prompt.<sup>50</sup> AT&T argued that this example shows resale is not yet "available" under the Statement. (AT&T Brief at 23-24.) MCI also stated that the Statement is deficient because it does not provide for notification to resellers when their customers have migrated to another carrier. Prompt notification is important so that the reseller can adjust its billing system to stop billing its former customers. Further, MCI noted that the SGAT does not make Centrex services available for resale as grandfathered services, even though both the Commission and the FCC have required that such grandfathered services be available for resale.<sup>51</sup>

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<sup>47</sup> ACSI Brief at 4-5, citing its witness Robertson's prefiled direct testimony at 8-10, 16-19.

<sup>48</sup> Tr. 2292 (ICI witness Strow).

<sup>49</sup> MCI Brief at 22, citing Tr. 2438, 2466.

<sup>50</sup> Tr. 1772 (MFS witness Meade).

<sup>51</sup> MCI Brief at 34, citing Docket No. 6865-U Order at p. 47; 47 C.F.R. § 51.615.

In general, these intervenors also argued that BellSouth has not shown actual availability of access to unbundled elements, access to rights-of-way, and the other items required by Section 251. Instead, they argued, BellSouth's SGAT only provides promises to deliver at some future time, available on paper only, and in many cases not even available for testing, let alone actual use. They also argued that BellSouth has not yet received orders for some items, such as local transport and unbundled local switching,<sup>52</sup> so BST cannot verify that such items will be "available" if and when they are ordered.

MCI pointed out that BellSouth promises to provide unbundled loops to MCI and other competitors in a much longer time period than the 48 (or fewer) hours in which BellSouth establishes service to its own customers. MCI contended that such delays will greatly impede competition in local markets.<sup>53</sup>

AT&T and others pointed out that the problems experienced by ICI, MFS, and ACSI discussed during the hearings are likely to multiply as additional requests for unbundled loops are made in the future. Thus, AT&T asked that the Commission not endorse illusory promises relating to key elements of BellSouth's network, through approval of the Statement. (AT&T Brief at 12-13.)

Although the Statement says BellSouth will provide access to its operator services, AT&T objected that BST did not set forth how it would comply if any carrier requested access to operator services, or that such access actually could be provided. AT&T was also concerned that at the hearing, BellSouth could not confirm whether any carrier had requested access to operator services and whether such access had been provided.<sup>54</sup> AT&T and MCI both expressed concern that the Statement does not provide for immediate migration of "as-is" directory listings.<sup>55</sup>

AT&T also objected that BellSouth is not providing nondiscriminatory access to poles, ducts, conduits and rights-of-way in accordance with Section 251(b)(4). The Statement provides that CLECs must wait up to 20 days from submitting an order before BellSouth will confirm that space is available, and another 60 days before the CLEC will obtain a license from BellSouth (or other owner) of the pole or conduit. In contrast, BellSouth has access to the same information and use of the right-of-way, conduit or pole for itself immediately.<sup>56</sup> AT&T also expressed concern that it is

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<sup>52</sup> Tr. 409, 411 (BST witness Scheye); see also MCI Brief at 23, citing Tr. 2442, 2443 (MCI witness Agatzon).

<sup>53</sup> MCI Brief at 20-21, citing Tr. 2436-37.

<sup>54</sup> AT&T Brief at 19, citing Tr. 412 (BST witness Scheye).

<sup>55</sup> AT&T Brief at 20; MCI Brief at 33; Tr. 2645, 2731 (MCI witness Martinez).

<sup>56</sup> AT&T Brief at 18-19, citing Tr. 403-05 (BST witness Scheye).

premature to evaluate whether the Statement fully complies with Section 251(b)(4) because additional problems with respect to such access may surface once other problems have been resolved which have delayed facilities-based competition.

MCI criticized Attachment D of the SGAT regarding nondiscriminatory access to poles, ducts, conduits and rights-of-way, because it does not discuss the "critical issue" of the compensation to CLECs who have improved BellSouth's structure when another carrier subsequently attaches to the structure. MCI cited the FCC's First Report and Order (at ¶ 1214) which stated that the modifying party should be allowed to recover a proportionate share of the modification costs from parties that later are able to obtain access as a result of the modification. (MCI Brief at 20.)

MCI also criticized the SGAT for not providing parity for such items as access to databases, and for not containing a commitment to supply information needed by CLECs to properly establish, implement and sustain their 911 networks.<sup>57</sup> According to MCI, BellSouth has not promised to provide critical network data, including rate center data and selective routing boundary information; and the SGAT does not establish procedures to reroute calls during times of network overload. Once again, the SGAT refers to an external handbook. (MCI Brief at 24, citing SGAT Art. VII, ¶ A.6, p. 14.) MCI also argued that the FCC has found access to incumbent LEC's Advanced Intelligent Network ("AIN") database and Service Creation Environment ("SCE")/Service Management System ("SMS") is required.

MCI charged that the SGAT is further deficient with respect to directory assistance services, in that it does not guarantee parity of features and performance for CLECs. (MCI Brief at 24, citing SGAT Art. VII, ¶ B.2, p. 14.)

As to number portability pursuant to Section 251(b)(2), AT&T objected that the SGAT makes no commitment for the delivery time on interim number portability, stating only that it will often be provided within 24 hours, and that BellSouth will commit only to discuss and agree on a time frame for each order upon receipt.<sup>58</sup> AT&T asserted that BST certainly can retain a number for a customer and route calls to a new location for its own purposes within a defined and much shorter period of time, and charged that BST proposes disparate treatment. (AT&T Brief at 21.)

MCI pointed out that the rates for interim local number portability were not reviewed or set by the Commission, and are proposed as interim, subject to true-up. MCI thus objected to the Statement's rates for interim local number portability. MCI also objected that the SGAT improperly allows carriers to block number portability when a customer has past due charges. Citing the FCC's Number Portability Order (see 47 C.F.R. Pt. 52, subpt. C), MCI argued that a carrier may not prevent a customer from porting its number to another carrier if the customer has unpaid charges. Further,

<sup>57</sup> MCI Brief at 24, citing Tr. 2636 (MCI witness Martinez).

<sup>58</sup> Tr. 415, 417 (BST witness Scheye).

MCI contended that paragraph G of the SGAT's Attachment G is too vague in providing that number portability can be discontinued based upon BellSouth's determination as to whether another carrier is "impairing or interfering" its system. MCI's concern is that a vague standard could permit anticompetitive practices, and allow BellSouth to turn off number portability almost at will or at least during high traffic periods.<sup>59</sup>

With respect to the "change charge" in paragraph H of the SGAT's Article XIV, page 22, MCI argued that unilateral determinations and assessments by BellSouth without procedures to contest "slamming" allegations is inappropriate and unsuited to the newly competitive environment in local telephone services.<sup>60</sup>

ACSI noted that BellSouth testified that the SGAT does not include performance standards.<sup>61</sup> ACSI and others argued that such standards are necessary to ensure that CLECs are treated on a nondiscriminatory basis and to ensure that local markets are opened for competition as intended by the Act. (ACSI Brief at 6-7.)

## 2. Commission Decision

BellSouth's Statement represents a substantial effort to comply with the other requirements of Section 251 quoted above. However, these requirements require additional implementation by BellSouth in order to make elements, operations support systems, and billing and other systems actually available. In other words, those sections require more than a written statement with facial compliance. They require actions to be taken by the local exchange company or the incumbent LEC. Therefore, in order for the Commission to determine whether the Statement should be approved as complying with those sections, it is appropriate for the Commission to determine whether it reflects actual BellSouth compliance.

Nondiscriminatory access to operational support systems (OSS) is an integral part of providing access to unbundled network elements, as well as making services available for resale. The record shows that BellSouth has not yet demonstrated that it is able to fulfill these important aspects of the Statement's provisions on a nondiscriminatory basis that places CLECs at parity with BellSouth. In addition, the pre-ordering and ordering interim "web" interfaces, and the interfaces for maintenance and repair, are not projected to be fully operational for roughly two months.<sup>62</sup> BellSouth is still working on an interface for Customer Records Information System ("CRIS") billing and for

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<sup>59</sup> MCI Brief at 28, citing Tr. 2640 (MCI witness Martinez).

<sup>60</sup> MCI Brief at 34, citing Tr. 2647 (MCI witness Martinez).

<sup>61</sup> BST witness Scheye's prefiled rebuttal testimony at 67-68.

<sup>62</sup> Tr. 387-88, 802 (BST witness Scheye).

local usage data, both of which may not be ready for two months.<sup>63</sup> Before BellSouth can offer the interfaces for actual CLEC use, testing must be completed. However, internal testing has not begun for some of the interfaces; and it is not yet known what standards for reliability BellSouth uses for its internal testing,<sup>64</sup> although comparative standards must be evaluated to ensure that the interfaces provide nondiscriminatory access. Consumer resale ordering interfaces have not completed systems readiness testing, or subsequent market readiness testing.<sup>65</sup> Thus it would be premature to allow the Statement to take effect. The Statement should not be approved so long as BellSouth has not demonstrated that it is able to actually provision the services of interconnection and access to unbundled elements, make services available for resale (including OSS interfaces), and other items listed in the Statement and required under Sections 251 and 252(d).

BellSouth continues to be engaged in a substantial effort to develop electronic interfaces. Many of these, including pre-ordering, ordering, directory listing, trouble reporting, and maintenance and repair, are projected to be available in at least a limited form by March 31, 1997; BellSouth also projects that work will continue with further improvements planned by December 31, 1997. As these milestones are met, BellSouth may present the results to the Commission and show whether they meet appropriate requirements.

As to making elements available upon CLEC request, there was evidence that BellSouth has been unable to provide certain unbundled loops as requested by new CLECs, cannot yet provide an unbundled network interface device ("NID"), and has experienced significant problems in testing and providing other elements that the Statement describes as available.<sup>66</sup> The Commission recognizes that not all the problems have been caused by BellSouth, but it remains the case that BellSouth has not yet completed its part to ensure that the items required under Section 251 will be actually available upon request by CLECs. Certain loops that are supposed to be unbundled, such as ADSL and HDSL, likewise are not currently available. ACSI's testimony documented significant problems that ACSI experienced in completing its initial unbundled loop cutovers from BellSouth and in providing quality service over BellSouth unbundled loops. Specifically, Mr. Robertson testified to undue delays and serious customer service disruptions experienced by ACSI in the provisioning of unbundled loops

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<sup>63</sup> Tr. 389-90 (BST witness Scheye).

<sup>64</sup> Tr. 3037, 3056-57, 3077 (BST witness Calhoun). Requests were made at the hearings for BellSouth to provide information on its internal standards. Such information has not been provided as of the date of this decision (March 20, 1997).

<sup>65</sup> Tr. 3043 (BST witness Calhoun).

<sup>66</sup> Tr. 3081 (BST witness Calhoun), Tr. 817 (BST witness Scheye), Tr. 1773-74 (MFS witness Meade), Tr. 2273-2289 (ICI witness Strow). The Commission notes that its rulings in the AT&T and MCI arbitrations (Dockets No. 6801-U and 6865-U) provided that CLEC direct connection to BellSouth's NID is to be considered on a CLEC-by-CLEC basis to verify that the CLEC has the technical ability to maintain proper safety conditions.

and number portability. These are the subject of ACSI's complaints to the FCC and to this Commission in Docket No. 7212-U.<sup>49</sup>

BellSouth can improve the Statement by specifying the standards to which it can commit in providing interconnection and unbundled access to network elements. To demonstrate parity and nondiscriminatory interconnection and unbundled access, BellSouth may submit its internal standards for comparative purposes. BellSouth's internal standards need not be a part of the Statement, but will be relevant in documenting that CLECs are treated on a nondiscriminatory basis.

The Statement provides little information on how CLECs can actually order switching elements, on the time frames for ordering, or on billing and auditing. The SGAT refers to a document entitled "OLEC-to-BellSouth Ordering Guidelines (Facilities-based)" for information regarding ordering and delivery of unbundled switching. The latter document is not a part of the SGAT, but is a BellSouth document which could be revised unilaterally. In addition, the specifics are sketchy, which does not facilitate use by CLECs. The Statement should contain sufficient information to support the conclusion that CLECs have parity with BellSouth as to relevant functions including information for 911 networks, directory assistance services, operator call completion services, and access to databases including the call completion, call-routing and line information databases. The Statement should also clarify that customers can migrate their directory listings "as-is" when they change to a new local service provider. In addition, BellSouth has not yet provided an electronic interface for directory listings; the Commission required BST to set this up by April 1, 1997. The Statement should also provide for prompt notification to reseller CLECs if and when their customers switch to another provider, so the reseller can stop billing to former customers.

This is not to say that BellSouth will be unable to work through the development and testing necessary to verify that elements can actually be provisioned and billing systems will operate correctly. However, the impact of additional requests for unbundled loops and other items required by CLECs will place additional pressure on BellSouth's systems, both technological and personnel who need to be trained. In addition, the mere fact that some items have not been ordered by CLECs does not prove that BellSouth is unable to provide them; for such items, what is significant is whether BellSouth can verify availability through testing procedures. In other words, even if CLECs have not ordered a particular item, or if billing has not yet been initiated for a particular service, BellSouth should be able to demonstrate through testing that the item is functionally available or that the billing system will function accurately.

Given that BellSouth has not yet shown that it can reliably provide unbundled loops and other unbundled elements in the controlled environment of pilot tests, unbundled elements are not yet

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<sup>49</sup> ACSI Brief at 4, citing its witness Robertson's prefiled direct testimony at 8-10. ACSI also presented evidence regarding BellSouth's practices with respect to building management preferred provider, exclusive sales agency, and contract sales arrangements, which the Commission does not reach with respect to ruling on the Statement.